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JUN 29 1992

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of  
CRYSTAL CLEAR COMMUNICATIONS, INC.  
THE RADIO MINISTRIES BOARD OF  
VICTORY CHRISTIAN CENTER  
ASSEMBLY OF GOD, INC.  
For a Construction Permit for  
a New FM Station on Channel 240A  
Seelyville, Indiana

) MM Docket No. 92-62  
)  
) File No. BPH-901214MA  
)  
)  
) File No. BPH-901217MJ  
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)  
)

To: The Review Board

**ORIGINAL  
FILE**

MOTION TO DISMISS NOTICES OF APPEAL

The Radio Ministries Board of Victory Christian Center Assembly of God, Inc. (the "Radio Board"), by counsel, hereby moves to dismiss the Notices of Appeal filed June 22 and June 23, 1992 by Crystal Clear Communications, Inc. ("Crystal"). In support thereof the following is stated:

By Memorandum Opinion and Order, FCC 92M-657 (released June 11, 1992), the presiding judge dismissed with prejudice Crystal's application for its failure to timely file its notice of appearance.<sup>1</sup> The Radio Board's application remained pending awaiting action on two petitions for leave to amend and an

<sup>1</sup> In doing so, the presiding judge also denied Crystal's unsupported motion to accept its late-filed notice of appearance. Id.

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unresolved air hazard issue.<sup>2</sup> Thus, Crystal's dismissal did not terminate the proceeding.

On June 22, 1992 Crystal, through the law firm of McFadden, Evans & Sill,<sup>3</sup> filed a Notice of Appeal. On June 23, 1992 Crystal,<sup>4</sup> through its original counsel, Stanley Emert, filed a second Notice of Appeal (hereinafter, the two pleadings are referred to jointly as the "Notices"). The Radio Board will not hazard a guess as to who actually represents Crystal, but will address the deficiencies of both filings.

In both Notices Crystal "provides notice" of its intention to appeal the dismissal of its application.<sup>5</sup> In both Notices Crystal fails to cite the rule under which it is filing. However, since Crystal's appeal is of a presiding officer's ruling terminating its right to participate as a party to the hearing proceeding, its

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<sup>2</sup> Those petitions were later accepted. See Order, FCC 92M-662 (released June 12, 1992) and Memorandum Opinion and Order, FCC 92M - 699 (released June 23, 1992). The Radio Board has filed a motion for summary decision on the air hazard issue.

<sup>3</sup> On that same date, the McFadden law firm filed a Notice of Special Appearance to enter an appearance to prosecute Crystal's appeal.

<sup>4</sup> Although the Emert Notice of Appeal is dated June 22, the Commission's records show it was not filed until June 23, 1992. Radio Board received a copy of it on June 25, 1992.

<sup>5</sup> The Emert Notice of Appeal also states that the filing provides notice of its appeal of "all prior rulings appealable at this time relating solely to Crystal Clear." Crystal does not identify any such other rulings, however.

appeal is governed by Section 1.301(a)(1).<sup>6</sup> Thus, the timing of Crystal's appeal is governed by Section 1.301(c)(2), which provides that appeals made under Section 1.301(a)(1) "shall be filed within 5 days after the order is released ... ." Accordingly, the deadline for filing an appeal of the June 11 order directing Crystal's dismissal was June 18, 1992. Moreover, Section 1.301 does not contemplate the filing of a notice of appeal. Therefore, Crystal's Notices are both unauthorized and, even if they were the appropriate procedural vehicle, untimely.

Crystal's failure to follow the Commission's procedural requirements and filing deadlines for an appeal is further evidence of its pattern of disregard for the Commission's rules. Such failure constitutes sufficient grounds for rejecting its Notices -- as well as any later-filed substantive appeals -- without further consideration. See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157, 164 (1991) (undue delay in the comparative process disserves the public by delaying institution of new service and exacting an economic toll on both the Government and the applicants).

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<sup>6</sup> Section 1.301(a)(1) provides "[i]f the presiding officer's ruling denies or terminates the right of any person to participate as a party to a hearing proceeding, such person, as a matter of right, may file an appeal from that ruling."

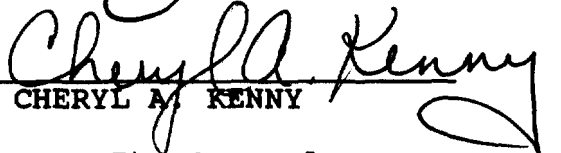
4.

WHEREFORE, in light of the foregoing, it is requested that the Notices of Appeal filed June 22 and June 23, 1992 by Crystal Clear Communications, Inc. be DISMISSED WITH PREJUDICE.

Respectfully submitted,

THE RADIO MINISTRIES BOARD  
OF VICTORY CHRISTIAN CENTER  
ASSEMBLY OF GOD, INC.

By   
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By   
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June 29, 1992

**CERTIFICATE OF SERVICE**

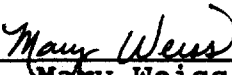
I, Mary Weiss, hereby certify that on this 29th day of June, 1992, copies of the foregoing Motion to Dismiss Notices of Appeal were hand delivered or mailed, first class postage prepaid, to the following:

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